

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**LONE STAR, FLCA and LONE STAR, §
PCA, §**

Plaintiffs §

V. §

No. 5:12CV104

**STREAM NATURAL RESOURCES L.C. §
ET AL. §**

Defendants §

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATE MAGISTRATE JUDGE**

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such actions has been presented for consideration. Defendants filed objections to the Report and Recommendation. Also before the Court is Plaintiff's response to the objections.

On May 17, 2013, the Magistrate Judge issued an extensive 33-page Report and Recommendation, recommending Defendants' Motion to Dismiss Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure be denied. Defendants object to the following issues addressed in the Report and Recommendation: (1) whether James and Pamala Waldrup, as guarantors, are indispensable parties to this action; (2) whether Plaintiffs lack standing to assert a claim under the Declaratory Judgment Act; (3) whether this matter is ripe; (4) whether the Court should exercise discretion and abstain from hearing this declaratory judgment action; and (5) whether this matter should be dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

Defendants raise several arguments for the first time in their objections, and those arguments

should not be considered. *Lewis v. Ascension Parish School Bd.*, 662 F.3d 343, 348 (5th Cir. 2011)(“This argument is waived because it was not presented to the magistrate judge. . . .”). However, even considering Defendants’ newly-raised arguments, the Court finds Defendants’ objections are without merit. The Court has conducted a *de novo* review of the Magistrate Judge’s findings and conclusions. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that Defendants’ Motion to Dismiss Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure (Dkt. No. 9) is **DENIED**.

IT IS SO ORDERED

SIGNED this 21st day of August, 2013.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE